IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1114 OF 2004

Mrs. Theresa Veronica and Ors. .. ..Appellants
Versus
Shri Siddheswar Devasthan Panch
Committee Solapur and Anr. .. ..Respondents

Mr.R.A.Thorat with V.G.Mujumdar for appellants
Mr.A.A.Kumbhakoni for respondent no.1

CORAM : P.V.KAKADE, J.

DATE : 12TH SEPTEMBER, 2005.

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by Addl. District Judge, Pune dated 23.6.2004 dismissing the appeal and confirming the judgment and order passed by Joint Civil Judge, Vadgaon, Maval dated 17.6.1999 decreeing the plaintiff's suit and directing the defendants 2 to 4 to remove the encroachment over C.T.S. No.123 shown in Exh.50 by red and blue colour in the map within the period of four months. Further the defendant nos. 2 to 4 were restrained by an order of permanent injunction to carry out the further permanent structure over the suit property C.T.S No.123 without the consent of the plaintiff.

2. I have heard the learned counsel for both the parties. Perused the entire record, including the judgments of both the courts below as well as compilation of documents produced on behalf of the appellants.

3. The plaintiff trust filed the suit against the defendant nos.1 to 4 for permanent injunction restraining the defendants from carrying out developments or making any construction over the disputed property and by way of amendment, the plaintiff also sought removal of the encroachment made by the defendants by making construction over the disputed property which consists of land CTS No.123, 124, 125, 125/1, 126, 126/1, 127 to 130, 131/1 and 152 located at Lonavala Municipal Council. The facts on record reveal that the Panch Committee of the plaintiff trust was the owner of the suit property along with the structure of the house thereon. The panch committee Solapur is looking after the said property. There are several properties of the said Trust including the properties at Lonavala and the suit property itself. The trust has appointed a person to look after the said property at

Lonavala. He was authorised and empowered to file the suit and suit is instituted by the said duly authorised person. One Mr. Castellino was lessee on the record of City survey of the suit property. Thereafter the name of the defendants 1 to 3 have been recorded as holders in the C.T.S. record of the suit property. CTS No.218/3 and 218/4 are adjacent to the southern side of C.T.S. No.123 and the defendant nos.1 to 3 are developing those properties through the defendant no.4. The plaintiff has alleged that he has nothing to do with the development in those two plots. However, the defendants have started construction in C.T.S. No.123 and hence the suit came to be filed alleging that the defendants had encroached upon their plot C.T.S.No.123 and therefore suit for removal of encroachment and possession of encroached property as well as perpetual injunction came to be filed. The defendants contested the suit, inter alia, denying the allegations made by the plaintiff and sought dismissal of the suit.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved that the suit was maintainable in its present form. It was further held that the defendants had

committed encroachment in CTS. No.123 to the extent of 1000 sq. ft. and the construction thereon was unauthorised as shown in the map drawn by the Court Commissioner and therefore plaintiff was entitled for permanent injunction and removal of unauthorised construction by demolition thereof. In this manner the suit came to be decreed. The appeal was carried to the District Court, Pune. The learned Addl. District Judge after hearing both the parties came to the conclusion that the findings recorded by the court below were legal and the encroachment on the suit property made by the defendants was proved and hence the appeal was dismissed confirming the decree passed by the lower court. Hence the present appeal.

4. At the outset it may be noted, on perusal of the record, there is no substantial question of law involved in this appeal. The learned counsel for the appellant brought to my notice that the lower appellate court had rejected two applications made by the appellant-defendants which were under Order 41 Rule 27 of the Civil Procedure Code in order to bring on record the additional documentary evidence. It was submitted on behalf of the appellants that the rejection of the

said applications by the lower appellate court has deprived the appellants rights to bring on record the true set of affairs and legal evidence, which was in support of their contentions, and therefore, such rejection of the applications amounts to miscarriage of justice.

. I have perused both the applications on record and order passed by the lower appellate court on the said applications rejecting the same. Perusal of the orders rejecting the said applications are seen to be properly passed by the lower appellate court taking the view that the evidence sought to be brought on record was at variance with the pleadings of the parties as well as no case was made out as contemplated under Rule 41 of Order 27 of C.P.C. and as such the applications were rejected. The second application for the same purpose was also rejected by order dated 6.3.2004 on the similar ground to the effect that contention made by the appellants were at variance with the pleadings of the parties and therefore, it was held that this is an act or an attempt on the part of the appellant to prolong the matter as there is no merit in the application and hence came to be rejected. The record further shows

that the review application was also made of the said orders. However, the said review applications also came to be rejected by order dated 23.6.2004.

5. It is needless to mention that the concurrent findings of both the courts below are on the basis of issues of facts and adjudication thereof and no substantial question of law arises from the adjudication made by the courts below, and therefore, this court has no reason to interfere in the dispute. Moreover, the perusal of the judgments of both the courts below, it shows that there is proper and legal appreciation of the evidence on record. In fact both the courts below have rightly pointed out that when it was evident that the appellants were permanent lessee in the suit property, they have not obtained their permission to construct in the suit property and said construction amounts to an encroachment. In fact the evidence of P.W.3 from local authority was also sufficient to suggest that the permission was not obtained from the owner or the lessor when the plan was got sanctioned from the local authority to carry out the construction over the suit property. The learned lower appellate court judge on the basis of available evidence has come to the

conclusion that the alleged construction which was obviously unauthorised, amounted to playing mischief with the property owned by the trust. In my considered view, this finding finds support from the entire record before us.

6. Time and again the Apex Court has observed that it is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. The concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under Section 100 of C.P.C. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The facts revealed from the record in this proceeding definitely show that there is neither any substantial question of law nor any element which would show that the findings recorded by the lower courts are perverse in any manner whatsoever. The rejection of the applications under Order 41 Rule 27 of C.P.C. are also seen to be just and proper and therefore, this court

shall refrain itself from interfering in the matter.

7. In the result the appeal stands dismissed with no order as to costs. Consequently Civil Application No.1414 of 2004 also stands dismissed with no order as to costs.

. At this stage the learned counsel for the appellants sought Stay of the Order. In view of the facts and circumstances the Order stands stayed for a period of six weeks from the date of this order.